



The Commonwealth of Massachusetts
DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY

July 27, 2003

CTV 02-17-A

In the Matter of Charter Communications Entertainment I, L.L.C. for a Determination of
Certain Cable Television Rates.

ORDER ON MOTION FOR LEAVE TO FILE APPEAL

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I. INTRODUCTION

On July 2, 2003, the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy (“Department”) approved basic service tier (“BST”) programming rates on separate Federal Communications Commission (“FCC”) Form 1240s for Charter Communications Entertainment I, L.L.C. (“Charter” or “the Company”) service in the communities of Auburn, Boylston, Dudley, East Longmeadow, Easthampton, Grafton, Hampden, Holden, Leicester, Ludlow, Millbury, Northborough, Northbridge, Oxford, Paxton, Southampton, Southborough, Southbridge, Spencer, Sturbridge, Upton, West Boylston, West Brookfield, Westborough, Wilbraham, and Worcester. Charter Communications Entertainment I, L.L.C., CTV 02-7, at 8 (2003) (“Order”). The Cable Division rejected the Company’s FCC Form 1240 filing for the City of Chicopee (“Chicopee”), directing the Company to refile its FCC Form 1240 for Chicopee in accordance with the Order, and to file a refund plan on or before July 18, 2003 for its BST overcharges resulting from the Company’s treatment of franchise-related costs. Id. The Cable Division also rejected Charter’s FCC Form 1205 filings for the year ending December 31, 2001, and directed the Company to refile its FCC Form 1205 on or before July 18, 2003, using a method for calculating home wiring rates consistent with its previously approved FCC Forms 1205. Id.

The Order stipulated that, in accordance with G.L. c. 166A, § 2, appeals of the Cable Division’s final decision may be brought before the full body of the Commissioners of the Department within fourteen days from the issuance of said decision. Id. at 9. Charter sent

its Appeal of Rate Order (“Appeal”) to the Department by facsimile on July 18, 2003, with a mailed copy received by the Department on July 21, 2003.¹ Charter states that it limits its Appeal to the Order’s treatment of Chicopee franchise-related costs (Appeal at 1). Charter takes issue with the Cable Division’s finding that “the \$250,000 capital grant that Charter expects to give to Chicopee under the new license is not a reasonably certain event during the projected period” (Appeal at 2, citing Order at 5). Charter states that it:

“mistakenly assumed that the filing deadline for this Appeal was July 18, 2003, because the Order establishes July 18, 2003 as the deadline for other related filings. Charter regrets the brief delay and hereby moves for leave to file this appeal. Charter respectfully submits that a proper review of this matter is in the public interest, and the Company would prefer to extend the opportunity to the Department (rather than the FCC) to perform the initial review.”

(id. at 1 n.1). In this Order, we address Charter’s request for leave to file the Appeal.

II. STANDARD OF REVIEW

G.L. c. 166A, § 2, provides that an appeal of a Cable Division final order must be filed with the Department no later than fourteen days of the issuance of said decision.

Section 2 further provides that except as otherwise provided in G.L. c. 166A, appeals taken from the orders of the Department shall be governed by G.L. c. 25, § 5. Section 5 states:

“[s]uch petition for appeal shall be filed with the secretary of the commission within twenty days after the date of service of the decision, order, or ruling of the commission, or within such further time as the commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling.”

¹ Department regulations stipulate that at the time a pleading, documents, or other papers are filed with the Department, there shall be furnished to the Department an original of such papers. 220 C.M.R. § 1.02(8)(a).

The Department's procedural rules state that with regard to extensions of the judicial appeal period from Commission orders, "reasonable extensions shall be granted upon a showing of good cause." 220 C.M.R. § 1.11(11). In determining what constitutes good cause, the Department has stated:

"[g]ood cause is a relative term and it depends on the circumstances of an individual case. Good cause is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other affected party."

Nandy v. Massachusetts Electric Company, D.P.U. 94-AD-4A, at 4 (1994), citing Boston Edison Company, D.P.U. 90-355-A, at 4 (1992). In balancing these interests, the Department has considered: (1) the extent of the delay, (2) the effect of the late participation on the ongoing proceeding, and (3) the explanation for the tardiness. Western Massachusetts Electric Company, D.P.U. 92-8C-A at 5 (1993); NYNEX, D.P.U. 94-50, at 3 (July 22, 1994). The Department concludes that the standard of review applicable to appeals of Commission orders is appropriately applied to appeals of Cable Division orders.

III. ANALYSIS & FINDINGS

The fourteen-day statutory deadline indicates a clear intention on the part of the Legislature to ensure that the decision of an aggrieved party to appeal a final order of the Cable Division be made expeditiously. Swift judicial review benefits both the appealing party and other parties, and serves the public interest by promoting the finality of Department orders. See Ruth C. Nunnally d/b/a L&R Enterprises, D.P.U. 92-34-A at 4 (1993).

The Cable Division issued its Order on July 2, 2003. By statute, aggrieved parties had fourteen days to file an appeal, thereby allowing for an appeal on or before July 16, 2003. While Charter provided a facsimile of its Appeal on July 18, 2003, two days after the statutory appeal deadline, it failed to file the original of its Appeal in compliance with Department regulation until July 21, 2003, and is in violation of the Department's regulations regarding service. See 220 C.M.R. §§ 1.02(8) and 1.05.

In its Appeal, Charter cites confusion on its own part for the delay in filing. The responsibility to understand and comply with applicable law lies with the petitioner. See Western Massachusetts Electric Company, D.T.E. 01-36/02-20 at 10 (2003) (Interlocutory Order on Appeal of Hearing Officer Ruling). Moreover, the Order clearly sets forth the appeal period as fourteen days. Order at 9. Charter's failure to provide a basis other than its own confusion is insufficient by itself to show good cause for the delay, and while not every procedural misstep requires dismissal, the late filing of Charter's Appeal with the Department is the type of error that calls for dismissal. See Eastern Energy Corp. v. Energy Facilities Siting Board, 419 Mass 151, 155 (1994) citing Friedman v. Board of Registration in Medicine, 414 Mass. 663, 665 (1993); Massachusetts Oilheat Council v. Department of Public Utilities, 418 Mass. 798, 801 (1994); Attorney General v. Department of Public Utilities, 390 Mass. 208, 213 (1983); Schulte v. Director of the Division of Employment Security, 369 Mass. 74, 79 (1975). In Schulte, the Supreme Judicial Court went so far as to state that:

“[s]ome errors or omissions are seen on their face to be so repugnant to the procedural scheme, so destructive of its purposes, as to call for the dismissal of the appeal. A prime example is attempted institution of an

appeal seeking judicial review of an administrative decision after expiration of the period limited by statute or rule.”

369 Mass. 74, 79. For the reasons of untimeliness stated above, we deny Charter’s motion and Appeal.

IV. ORDER

Accordingly, after due consideration, it is

ORDERED: That the Motion for Appeal of Rate Order by Charter Communications Entertainment I, L.L.C. of the Cable Television Division’s July 2, 2003 Order is DENIED.

By Order of the Department,

/s/
Paul B. Vasington, Chairman

/s/
James Connelly, Commissioner

/s/
W. Robert Keating, Commissioner

/s/
Eugene J. Sullivan, Jr., Commissioner

/s/
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).